

the evidence submitted; hear oral argument at the close of testimony; fix the time for filing briefs, motions, and other documents to be filed in connection with hearings and the administrative law judge's decision thereon, except as otherwise provided by the rules in this part; act upon petitions for enlargement of time to file such documents, including answers to formal complaints; and dispose of any other matter that normally and properly arises in the course of proceedings. The presiding officer or the Commission may exclude any person from a hearing for disrespectful, disorderly, or contumacious language or conduct.

(b) All of the functions delegated in subparts A to Q of this part, inclusive, to the Chief Judge, presiding officer, or administrative law judge include the functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter, pursuant to the provisions of section 105 of Reorganization Plan No. 7 of 1961. [Rule 147.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 58 FR 38650, July 19, 1993]

§ 502.148 Consolidation of proceedings.

The Commission or the Chief Judge (or designee) may order two or more proceedings which involve substantially the same issues consolidated and heard together. [Rule 148.]

§ 502.149 Disqualification of presiding or participating officer.

Any presiding or participating officer may at any time withdraw if he or she deems himself or herself disqualified, in which case there will be designated another presiding officer. If a party to a proceeding, or its representative, files a timely and sufficient affidavit of personal bias or disqualification of a presiding or participating officer, the Commission will determine the matter as a part of the record and decision in the case. [Rule 149.]

§ 502.150 Further evidence required by presiding officer during hearing.

At any time during the hearing, the presiding officer may call for further evidence upon any issue, and require such evidence where available to be presented by the party or parties con-

cerned, either at the hearing or adjournment thereof. [Rule 150.]

§ 502.151 Exceptions to rulings of presiding officer unnecessary.

Formal exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action which it desires the presiding officer to take or its objection to an action taken, and its grounds therefor. [Rule 151.]

§ 502.152 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof. [Rule 152.]

§ 502.153 Appeal from ruling of presiding officer other than orders of dismissal in whole or in part.

(a) Rulings of the presiding officer may not be appealed prior to or during the course of the hearing, or subsequent thereto, if the proceeding is still before him or her, except where the presiding officer shall find it necessary to allow an appeal to the Commission to prevent substantial delay, expense, or detriment to the public interest, or undue prejudice to a party.

(b) Any party seeking to appeal must file a motion for leave to appeal no later than fifteen (15) days after written service or oral notice of the ruling in question, unless the presiding officer, for good cause shown, enlarges or shortens the time. Any such motion shall contain not only the grounds for leave to appeal but the appeal itself.

(c) Replies to the motion for leave to appeal and the appeal may be filed within fifteen (15) days after date of service thereof, unless the presiding officer, for good cause shown, enlarges or shortens the time. If the motion is

granted, the presiding officer shall certify the appeal to the Commission.

(d) Unless otherwise provided, the certification of the appeal shall not operate as a stay of the proceeding before the presiding officer.

(e) The provisions of § 502.10 shall not apply to this section. [Rule 153.]

§ 502.154 Rights of parties as to presentation of evidence.

Every party shall have the right to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The presiding officer shall, however, have the right and duty to limit the introduction of evidence and the examination and cross-examination of witnesses when in his or her judgment, such evidence or examination is cumulative or is productive of undue delay in the conduct of the hearing. [Rule 154.]

§ 502.155 Burden of proof.

At any hearing under section 3 of the Intercoastal Shipping Act, 1933 (§ 502.67), the burden of proof to show that the new rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the respondent carrier or carriers. In all cases, as prescribed by the Administrative Procedure Act, 5 U.S.C. 556(d), the burden shall be on the proponent of the rule or order. [Rule 155.]

[58 FR 58976, Nov. 5, 1993]

§ 502.156 Evidence admissible.

In any proceeding under the rules in this part, all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative, shall be admissible. All other evidence shall be excluded. Unless inconsistent with the requirements of the Administrative Procedure Act and these Rules, the Federal Rules of Evidence, Public Law 93-595, effective July 1, 1975, will also be applicable. [Rule 156.]

§ 502.157 Written evidence.

(a) The use of written statements in lieu of oral testimony shall be resorted

to where the presiding officer in his or her discretion rules that such procedure is appropriate. The statements shall be numbered in paragraphs, and each party in its rebuttal shall be required to list the paragraphs to which it objects, giving an indication of its reasons for objecting. Statistical exhibits shall contain a short commentary explaining the conclusions which the offeror draws from the data. Any portion of such testimony which is argumentative shall be excluded. Where written statements are used, copies of the statement and any rebuttal statement shall be furnished to all parties, as shall copies of exhibits. The presiding officer shall fix respective dates for the exchange of such written rebuttal statements and exhibits in advance of the hearing to enable study by the parties of such testimony. Thereafter, the parties shall endeavor to stipulate as many of the facts set forth in the written testimony as they may be able to agree upon. Oral examination of witnesses shall thereafter be confined to facts which remain in controversy, and a reading of the written statements at the hearing will be dispensed with unless the presiding officer otherwise directs.

(b) Where a formal hearing is held in a rulemaking proceeding, interested persons will be afforded an opportunity to participate through submission of relevant, material, reliable and probative written evidence properly verified, except that such evidence submitted by persons not present at the hearing will not be made a part of the record if objected to by any party on the ground that the person who submits the evidence is not present for cross-examination. [Rule 157.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.158 Documents containing matter not material.

Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the offering party shall present the original document to all parties at the hearing for their inspection, and shall offer a true copy of the matter which is to be introduced, unless the presiding officer